IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3028 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VORA ARJUMANBANU GULAMNABI

Versus

GOVT.OF GUJARAT

Appearance:

1. Special Civil Application No. 3028 of 1994

MR HV PUJARA for Petitioner No. 1

MR UR BHATT, AGP. for Respondent No. 1

MR MITUL K SHELAT for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 05/07/2004

ORAL JUDGEMENT

1 The petitioner has moved this petition under

Article 226 of the Constitution of India interalia seeking following reliefs :

"(10) In the circumstances, the petitioner prays that:-

(A) The resolution of respondent No.1 dated 21/9/1993 at Annexure 'C' be quashed and set-aside as being against the settled principle of mathematics.

(B) The resolution Annexure 'B' dated 16/10/91 be upheld as being in accordance with the settled principle of mathematics.

(C) Pending this petition the respondents be directed to stay the operation of resolution dated 21.9.93 at Annexure 'C'.

(D) The Hon'ble Court may grant any other remedy which deem fit."

2 The petitioner passed her B.A.(English) Examination with 56% marks and thereafter passed her M.A.Degree with 439 marks in II class from Sardar Patel University in July,1993 as stated in the petition. It is further stated in the petition that respondent No.1-State Government had by resolution dated 16/10/1991 stated that for the purpose of appointment to the post of Lecturer, minimum educational qualification prescribed is Master's Degree with 55% and for this purpose those who have obtained marks between 54.50% to 54.99% be considered as having obtained 55% marks and be considered for the purpose of appointment. The said resolution appears to have been modified by subsequent resolution dated 21/9/1993 (Annexure-C), wherein earlier resolution of 16/10/1991 has been cancelled and it is stated that as per guidelines issued by University Grants Commission vide communication dated 13/7/1992 the educational qualification for the appointment to the post of Lecturer has to be considered at 55% only and the Universities have been directed to make appropriate amendment in their respective statutes immediately. The case of the petitioner is that the petitioner had made applications for the post of Lecturer to various colleges but before she is called for interview, on 21/9/1993 the subsequent resolution came into existence and, hence, the petitioner could not get the appointment because the interview came after 21/9/1993.

3 Mr.H.V.Pujara, learned Advocate appearing on behalf of the petitioner submitted that the petitioner had obtained 54.9% in her Master Degree Examination and taking into consideration the principle of rounding of as normally applied in Mathematics, the petitioner could be said to have acquired 55% in her Master Degree. That the said principle be taken into consideration and the subsequent resolution be held to be bad in law and be quashed and set aside.

4 Heard Mr.U.R.Bhatt, learned Assistant Government Pleader appearing on behalf of respondent No.1 and Mr.Mitul Shelat, learned Advocate appearing on behalf of respondent No.2. Both the learned Advocates appearing on behalf of the respondents have submitted that the impugned resolution is based on the guidelines issued by University Grants Commission and the invocation of principle of mathematics for the purpose of holding resolution as being bad in law cannot be permitted. Mr.Shelat has further submitted that in so far as respondent No.2 is concerned, the petition is misconceived as qua the said respondent no relief is sought.

5 It is apparent that the petition is required to be rejected for the following reasons :

There can be no right, much less a fundamental right to insist on a particular mode or manner of determination of minimum qualification for the purpose of appointment to a post. Determination of basic minimum qualification for appointment to any post would fall within realm of laying down policy and it is settled that the Court would not be empowered to go into the reasons for formulation of a particular policy, unless and until, it is shown that either there is no basis or it is not rational or has no nexus with the object sought to be achieved. In other words, only if it can be shown that there is no principle but the decision in the name of framing a policy has been made arbitrarily would the Court intervene. The present is not such a case. The impugned resolution is based on guidelines issued by the University Grants Commission and in the circumstances it cannot be stated by any means that the same is arbitrary or capricious in any manner whatsoever.

6 In the circumstances, no case is made out for treating the impugned resolution dated 21/9/1993 as bad in law. The petition accordingly fails and is rejected. Rule is discharged. There shall be no order as to costs.

(D.A.Mehta, J)